THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

W.A.NO:926 of 2001

DATE: 07-10-2005

Between:

1 Board of Directors Head Office,
The Nagarjuna Grameena Bank Khamman
2 The Chairman
The Nagarjuna Grameena Bank Head Office
Khammam

..... APPELLANTS

AND

M.P.Bruce son of M.Prakasham
Shaligowraram Branch of Nagarjuna Graeena Bank Suryapet Taluk
R/o H.No.1-4-880/2/14, New Bakaram, Hyderabad-1

.....RESPONDENT

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

AND

THE HON'BLE Dr. JUSTICE G.YETHIRAJULU

W.A.No.926 of 2001

JUDGMENT: (Per the Hon'ble Dr.Justice G.Yethirajulu)

This writ appeal is directed against the order of a learned single Judge of this Court dated 23-04-2001 in W.P.No.32525 of 1997. The respondent filed a writ of Mandamus praying to direct the appellants to pay back wages for the period he was out of service due to the illegal order of his dismissal from the service of the bank passed by the respondents, which was set aside by this Court through the order dated 19-07-1989 on the ground that the proceedings of the appellants are in violation of the principles of natural justice and fair play.

The writ petitioner worked as a Branch Manager, Shaligouraram Branch of Nagarjuna Grameena Bank, Suryapet Taluk, Nalgonda District. While the writ petitioner was functioning as a Branch Manager, certain allegations were levelled against him. An enquiry was conducted and he was dismissed from service through the proceedings dated
30-04-1980. The writ petitioner filed W.P.No.2451 of 1980 challenging the order of dismissal before this Court. The writ petition was disposed of on 30-07-1986 with a direction to the petitioner to avail the right of appeal provided under the
Rules. Accordingly, the petitioner made an appeal to the Board

of Directors and the Board of Directors passed an order on
27-09-1986 confirming the order of dismissal dated 30-04-1980. Assailing the validity of the said order, the writ petitioner preferred W.P.No.16486 of 1986, praying to issue a writ of Certiorari calling for the records and set aside the order of dismissal by holding that the dismissal of the petitioner from the service of the bank as illegal, arbitrary and unconstitutional and to direct reinstatement of the petitioner into service as a Branch Manager with all consequential benefits.

A learned single Judge of this Court allowed W.P.No.16486 of 1986 on 19-07-1989. The operative portion of the order is as follows:

> "…….. when the original order is illegal, the confirmation of the same is also illegal. The entire proceedings adopted by the Respondents are in violation of principles of Natural Justice and fair play. The writ petition is therefore allowed. No costs.
>
> Normally when the Court allows the writ petition, it must give option to the Respondents to conduct an enquiry afresh. But, in view of the fact that the matter is pending for over 8 years, I do no think that this is a fit case where at this distance of time the matter can be kept alive to harass the delinquent officer. Under these circumstances the impugned order is quashed."

In pursuance of the said order, the respondents reinstated the petitioner into service on 15-09-1989. Subsequently, the petitioner made several representations for consequential benefits. The respondents through the proceedings dated
08-01-1990 and 03-02-1990 intimated the petitioner that the question as to how the period from the date of dismissal to the date of reinstatement is to be treated will be decided basing on the Courts decision on their appeal. The appellants preferred W.A.No.256 of 1990 before a Division Bench of this Court and the Division Bench through the order dated 27-09-1995 dismissed the appeal by observing that they are unable to
differ with the view of the learned single Judge. Subsequent to the dismissal of the writ appeal, the petitioner made representations to the respondents on 19-10-1995 and
06-05-1996 requesting for release of the consequential
benefits. On 10-06-1996, the petitioner issued a legal notice for consequential benefits and the respondents through the proceedings dated 25-06-1996

communicated that the petitioner is not entitled for back wages or any other benefits. The petitioner after receipt of those proceedings, filed Contempt Case No.807 of 1996 before this Court by contending that once the writ petition is allowed and the impugned order was quashed, the petitioner is entitled for arrears of salary. But, the Contempt Case was dismissed by this Court on the ground that the respondents have not committed any contempt inasmuch as there is no positive direction either in the writ petition or in the writ appeal to pay the back wages. The petitioner, being aggrieved by the dismissal of the contempt case No.807 of 1996 on 20-12-1996, preferred a Special Leave Petition before the Hon'ble Supreme Court in S.L.P(Civil) No.9196 of 1997 and it was dismissed by the Hon'ble Supreme Court through the order dated 07-05-1997 which reads as follows:

> "We do not find any reason to interfere with the order of the High Court. The Special Leave Petition is dismissed. The dismissal of the petition, however, shall not come in the way of the petitioner to take recourse to such other remedies as may be available to him in law."

The writ petitioner, by taking the aid of the observation of the Hon'ble Supreme Court, filed the present writ petition No.32525 of 1997 seeking a direction to the appellants to pay back wages for the period during which he was out of service with all consequential benefits. A learned single Judge of this Court allowed the writ petition directing the appellants to pay all back wages to the petitioner therein for the period of suspension i.e., from 30-04-1980, the date of dismissal, till 15-09-1989, the date of reinstatement, together with attendant benefits within a period of four months from the date of receipt of a copy of the order. The learned single Judge while allowing the writ petition, made the following observation:

> "It is to be noticed that in the instant case, there is no final adjudication with regard to the issue of consequential benefits though raised and in the absence of any adjudication of this aspect, in my opinion, the doctrine of constructive res judicata as contemplated under 11 of the C.P.C. is not attracted. The issue of granting consequential benefits was not heard and decided and there is no adjudication on merits. Quash signifies, made void or annual. The impugned order does not disclose that the petitioner was gainfully employed and there is no averment made even in the counter affidavit and no affidavit is filed so as to state that the petitioner was elsewhere employed during the period in question, except stating that there was no direction granting back wages or consequential benefits in the earlier order in the writ petition."

The appellants, being aggrieved by the order of the learned single Judge dated 23-04-2001, preferred this appeal questioning its validity and legality. The point for consideration is whether there are grounds to disturb the order of the learned single Judge dated 23-04-2001 in W.P.No.32525 of 1997.

In W.P.No.16486 of 1986, the petitioner made a specific prayer of reinstatement with all consequential benefits.

A learned single Judge of this Court allowed the writ petition by observing that the proceedings adopted by the respondents are in violation of principles of natural justice and fair play. But, the relief of consequential benefits was not granted. The petitioner, being satisfied with the relief granted by the Court after a period of 8 years, did not prefer any appeal in respect of the relief of consequential benefits not granted by the learned single Judge. The respondents preferred W.A.No.256 of 1990 before a Division Bench of this Court challenging the reinstatement of the petitioner granted by the learned single Judge. At the time of hearing of the writ appeal, the Division Bench observed that

19 charges were framed against the petitioner and he submitted his explanation. In the explanation, the petitioner explained with reference to each charge the circumstances under which he was made to do those acts. He further mentioned that there was no cooperation from his subordinates and as he was new, some irregularities might have taken place, but, however, he may be pardoned in case charges are held proved. The Division Bench observed that the statements made by the petitioner do not amount to clear and unambiguous admission of his guilt and he is entitled under Article 311 (2) of the Constitution to have a reasonable opportunity of meeting the charge framed against him.

The enquiry officer mentioned in his report that the charges are serious criminal offences, if proved, therefore, a further enquiry has to be conducted to come to a conclusion and as no further enquiry was conducted, he is unable to give a conclusive report. The enquiry officer did not hold the petitioner guilty of misappropriation of the amounts.

In the light of the above circumstances, the Division Bench was unable to differ with the view expressed by the learned single Judge. Accordingly, the Division Bench dismissed the writ appeal.

The Division Bench did not make any mention about the non-granting of consequential benefits by the learned single Judge. Subsequent to the dismissal of the writ appeal, the petitioner made an application to the Chairman of the Bank requesting to treat the entire period of suspension from 30-04-1979 to 15-09-1989 as duty with consequential benefits like increments, seniority etc. Subsequently, a legal notice was issued by the petitioner to the Chairman of the Bank, wherein it was mentioned that the learned single Judge did not deny the consequential benefits and when once the writ petition is allowed, the petitioner is not only entitled for reinstatement, but also consequential benefits. The appellants reinstated the petitioner before filing W.A.No.256 of 1990, but without consequential benefits. In view of the dismissal of writ appeal, the petitioner is eligible and entitled for all consequential benefits. Therefore, he requested to implement the Judgment of this Court in W.P.No.16486 of 1986 dated 19-07-1989, which was confirmed in W.A.No.256 of 1990 on 27-09-1995 and release the consequential benefits, otherwise he will be constrained to take legal action against the appellants. In the reply to the said legal notice, the appellants mentioned as follows:

> "Neither the single Judge nor the Division Bench of the High Court has held that your client is entitled for back wages or attendant benefits. Only the order has been quashed. Your client is not entitled for back wages or any other benefits."

In the light of the above circumstances, it has to be examined whether the petitioner is entitled for the relief sought for in the writ petition. The legal position on this aspect is interesting.

In **U.P. WAREHOUSING CORPN. v. VIJAY NARAYAN ,** the Supreme Court held as follows:

> "In matters of employment, while exercising Article 226 of the constitution, over the orders and quasi-judicial proceedings of an administrative authority—not being a proceeding under the industrial/labour law before an industrial/labour tribunal – culminating in dismissal of the employee, the High court should ordinarily, in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as

> a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored), such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court. Whether a workman or employee of a statutory authority should be reinstated in public employment with or without full back wages, is a question of fact depending on evidence to be produced before the tribunal. If after the termination of the employment the workman/employee was gainfully employed elsewhere, that is one of the important factors to be considered in determining whether or not the reinstatement should be with full back wages and with continuity of employment. For these twofold reasons, we are of opinion that the High Court was in error in directing payment to the employee full back wages. While upholding the Judgment of the High Court with regard to the quashing of the order of dismissal of the respondent on the ground of its being invalid, we delete the direction for payment to the respondent full back wages."

In **NON-CONVENTIONAL E.D.C. OF A.P. LTD v. G.T. RAO** , a Division Bench of this High Court held as follows:

> "The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement, if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. It the employee succeeds in the fresh enquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any, and the extent of the benefits, he will be entitled.

In the case on hand, the petitioner was out of employment for a period of 10 years. There is no material placed before the Court whether he was gainfully employed during the said period or remained idle.

The Supreme Court in the Judgment in U.P. Warehousing Corpn.'s case clearly observed that while exercising the supervisory jurisdiction under 226 of the Constitution, the Court in the event of finding the dismissal order illegal, simply quash the same and should not give a positive direction for payment of full back wages and such peculiar powers can be exercised by adjudicating agency, which on evidence will consider the aspect of gainful employment of the employee during the period of dismissal.

The learned single Judge by observing that as the impugned order does not

disclose that the petitioner was gainfully employed and as there was no averment made in the counter affidavit that the petitioner was elsewhere employed during the period in question, ordered that the petitioner is entitled for the relief.

In the light of the above principle laid down by the Supreme Court and the Judgment of a Division Bench of this Court in G.T. Rao's case, we respectfully differ with the view expressed by the learned single Judge and we are of the view that as the petitioner did not agitate about the denial of consequential benefits in the previous proceedings, he is not entitled for the relief of consequential benefits through this
writ. Therefore, the order of the learned single Judge dated
23-04-2001 in W.P.No.32525 of 1997 is set aside.

In the result, the writ appeal is allowed by setting aside the order of the learned single Judge dated 23-04-2001 in W.P.No.32525 of 1997. No order as to costs.

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B.PRAKASH RAO, J

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Dr.G.YETHIRAJULU, J

Date: 07-10-2005.

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